Sora 2's Short-Lived 'Opt-Out' Copyright Approach Spells Imminent Legal Showdown Between AI and Creatives

AJ Dellinger *Published November 05, 2025*

On Sept. 30, OpenAI launched Sora 2, the second generation of its flagship video generation model, and an accompanying Sora smartphone app that gave users the ability to create 10-second clips of fully computer-generated video. Despite its invite-only release, within a matter of hours, social networks outside of the limited Sora feed were littered with AI-generated videos, often containing the likeness of familiar and copyrighted figures.

While previous image and video generation models could be made to generate such figures, they were typically considered a violation of the model's functionality. Most companies created filters designed to prevent certain copyrighted material from being replicated in the outputs of their models.

OpenAI took a unique approach to protected material with Sora 2: it required copyright holders to opt out of having resemblances of their protected characters, meaning they would have to affirmatively inform the company to exclude their material from outputs generated by the Sora model. In order to do so, rightsholders had to fill out a copyright dispute form that the company would review.

OpenAI seemingly adopted its copyright approach without significant consideration as to how it would impact those who hold the rights to popular figures and characters. The company published a post titled "Launching Sora responsibly," which makes no reference to copyright or protections for rightsholders.

The opt-out policy was only in effect for three days before OpenAI CEO Sam Altman published a blog post in which he indicated the company would "give rightsholders more granular control over generation of characters, similar to the opt-in model" with additional controls. Altman noted that rightsholders he spoke with "are very excited for this new kind of 'interactive fan fiction' and think this new kind of engagement will accrue a lot of value to them."

But a considerable number of rightsholders expressed something short of excitement.

The Creative Artists Agency said the company's Sora model posed "significant risks" and suggested OpenAI was "disregarding global copyright principles and blatantly dismissing creators' rights." The Motion Picture Association explicitly said Sora 2 videos "infringe our members' films, shows, and characters." The United Talent Agency accused OpenAI's Sora model of seeking to "profit from our clients' intellectual property and likeness," and said "the use of such property without consent, credit or compensation is exploitation, not innovation."

Rob Rosenberg, a partner at the New York law firm Moses Singer and the former executive vice president and general counsel at Showtime Networks, said that OpenAI's opt-out model was an attempt to invert the paradigms created by previous copyright law, under which rights holders have "exclusive rights to reproduce, distribute, display, perform, or create derivative works of their copyrighted work," with the exception of fair use.

"The opt-out model places the burden on rightsholders to monitor and request exclusion, rather than on the user to secure permission ahead of time," Rosenberg explained. "It challenges the norm of 'permission first' in licensing and derivative use of copyrighted works and raises questions about control, compensation, and the business model for IP owners."

There are not many analogs to Sora's outputs. The outputs could potentially be viewed as transformative, but are almost certainly the result of training an AI model on large quantities of copyrighted material. And

then there's those outputs' sheer volume.

There are even fewer analogs to OpenAI's "ask forgiveness, not permission" approach to rightsholders.

"There are a few specific instances of licensing schemes that vary from the traditional model such as in data licensing or blanket licensing contexts," Rosenberg said, pointing to examples like stock footage libraries or "blanket" licenses in music that allow for unlimited uses for a flat fee. But, even in those cases, rightsholders have to grant permission ahead of time, definitively opting into the agreement. Even "open data" models like Creative Commons licenses, which grant broad permissions to users, are voluntary for rightsholders and require them to opt into participating.

Christian Mammen, attorney and San Francisco Office Managing Partner at the AI and copyright law firm Womble Bond Dickinson, pointed to an opt-out model proposed by the United Kingdom government regarding text and data mining. That model would have allowed for the collection of copyrighted data for noncommercial research purposes, while giving rightsholders the ability to exclude their content from commercial uses. "The proposal was met with considerable protest from the UK creative sector," he noted, though it is still under consideration.

Data mining is related to the inputs that help train an AI model. But in the case of Sora, the inputs and outputs are impossible to separate from the copyright conversation.

"If you put the words 'Homer Simpson' into a video generator and it can show you Homer Simpson, there's no other way for it to be able to do that except for having been exposed to a lot of Homer Simpson cartoons," Matthew Butterick, a typographer, programmer, and lawyer at Butterick Law PC, explained. "It can't spontaneously create meanings for these terms."

Essentially, for Sora to produce copyrighted material as an output, even in a modified form, it almost certainly had to have been trained on that material as an input. OpenAI does not disclose the data it uses to train its models, but researchers and journalists have shown it is capable of accurately replicating proprietary content. For instance, The Washington Post was able to get Sora to recreate scenes from the Netflix show "Wednesday." Netflix told the publication it did not provide any content to OpenAI for training.

So far, most AI companies including OpenAI have argued that using copyrighted material for training models falls under fair use exemptions, which establish specific exceptions to copyright law that do not require a party to get permission from or provide payment to the copyright holder.

Mammen said there are more than 50 ongoing lawsuits challenging copyright infringement and fair use issues as it relates to AI models. "But we only have two rulings on fair use so far, and they point in different directions," he said. "So there remains some uncertainty about how the fair use issues, in particular, will ultimately be resolved by appellate courts."

Those decisions that Mammen referred to include a ruling out of the U.S. District Court for the Northern District of California that found that training an AI model does amount to fair use, and a ruling from the U.S. District Court for the District of Delaware that found the opposite.

“I think at the outset, some folks thought one of these cases will go to the Ninth Circuit, the Supreme Court, and then we'll have this one-size-fits-all ruling,” Butterick said. ”We may never get there.”

Butterick is at the front line of trying to establish case law on these matters. Though he earned a law degree at UCLA and was admitted to the State Bar of California in 2007, he had not practiced law in over a decade before getting involved in a number of cases claiming generative AI companies are infringing upon the rights of artists and creatives by using their material in training models without consent.

Most of those cases relate to inputs. But cases regarding outputs have their own complications. Butterick noted that, in addition to fair use arguments including claims that outputs are transformative, AI companies have also argued that users who generate the image are the ones who should be held responsible for infringement, rather than the companies themselves.

But Sora 2 is likely to produce more challenges related to AI outputs. “It would not surprise me if there is a new wave of litigation as new formats, such as video, come online,” Mammen said. “Different media formats raise different issues, and bring out different stakeholders.”

Rosenberg offered a similar assessment. “Depending on how effective OpenAI’s recent policy changes prove to be, I believe there is a likelihood of legal action, or at least threats of it,” he said, noting that “the inclusion of popular copyrighted characters in Sora-generated videos has already drawn attention.”

According to Rosenberg, rightsholders are likely to claim “loss of control, lost licensing revenue, or dilution of brand, and that any opt-out model may undercut their exclusive right to authorize derivative uses.” As a result, he expects some will send cease and desist letters, request takedowns, or demand revenue share.

He also suggested that OpenAI’s decision to quickly shift from its opt-out approach to an opt-in model “suggests OpenAI perceives reputational and legal risk and is attempting to mitigate it.”

Rosenberg expects OpenAI will continue to pursue a fair use argument, making the case that training its model is transformative. But he said that even if previous rulings finding that training models constitutes fair use hold up, Sora-generated videos that reproduce copyrighted material may complicate matters for the company.

“Even if training the model is found to be defensible, the outputs might replicate copyrighted characters in ways that resemble derivative works, which increases risk of infringement claims,” he said. “The more the model output replicates the copyrighted characters or scenes, the weaker the transformation argument may be.”

Rosenberg said that copyright holders are likely to demand that OpenAI disclose training datasets. But even without that, models like Sora are plagued by the “Italian Plumber Problem.” The term, coined by Mathew Sag, a law professor specializing in AI and machine learning at Emory University, refers to the fact that models reliably reproduce recognizable characters even if the user doesn’t name them. It shows that when AI models are asked to generate images of a “video game Italian plumber,” they reliably generate an output resembling Nintendo character Mario.

While that might offer large rightsholders room to challenge the outputs of a model without having direct access to training data, Butterick noted that smaller artists whose work is also swept up in scraping for model training have a much more difficult hill to climb to prove their work is in the data set. “If you're an artist who doesn't have those kinds of recognizable characters, you have a bit of a tougher case, because you need to be able to point to specific images,” he said.

Rosenberg said that in the next 12 to 24 months, he expects to see a flurry of negotiations and licensing frameworks between AI companies and rightsholders. Inevitably, some of those will come out of lawsuits and settlements.

Butterick noted that for firms like OpenAI, there’s motivation to litigate these matters despite the risk of penalty. Copyright law allows for fines of $750 per infringement, and up to a maximum of $150,000 per infringement for a willful violation of copyright. “The numbers get very big very quickly for these companies, so there is a lot of potential risk,” he said, noting that some cases include questions about millions of works in a single case.

“On the other hand, if they're right that it's fair use, then it's free,” Butterick continued. “The price is zero. They don't need to ask anyone.”

Photo: Open AI CEO Sam Altman speaks during Snowflake Summit 2025 at Moscone Center on June 2, 2025 in San Francisco, California. Snowflake Summit 2025 runs through June 5th. (Photo by Justin Sullivan/Getty Images)

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